

## STATUS OF THE CLAIMS

Claims 1-4 are pending in the application.

Claims 1-4 were rejected under 35 USC§102 as being anticipated by Karow '404.

Claims 3-4 were rejected under 35USC§112, second paragraph, as being indefinite for failing to point out and distinctly claim the subject matter which applicant regards as the invention.

**Summary of the Invention**

An airborne contaminant indicating device adapted for attachment to a person's nose for indicating the presence of a microbial contaminant entrained in an air stream passing through the nose. In a particularly preferred embodiment, the device is a clip with a proximal "UU" shaped dilating portion adapted to be inserted within the nostrils; the "U's" being connected to one another medially by an elastically deformable extension portion, the extension portion being two straight parallel strips, one end of the strips being integral with the dilating portion and the opposing end of the strip integral with an arcuate septum attachment portion. The septum attachment portion spaces the distal ends of the strips of the extension portion so that the strips straddle and gently squeeze the nasal septum. The device has a contaminant-interactive coated surface in contact with a portion of the air passing through the nose. The design of the embodiment provides maximum air flow through the nostrils. The proximal, dilating portion of the device consists of two "U" shaped strips, each strip being affixed to a proximal open end of the "U" shaped extension portion and at right angles to the plane of the extension portion. The dilating portion

presents a smooth outer tissue-contacting surface which urges the inner surface of the walls of the nostrils forcing them outwardly. A portion of the surface in opposition to the tissue-contacting surface includes a microbial contaminant interactive coating that is adapted to immobilize one or more contaminants in the air. The device may be further processed in order to identify the specific microbes immobilized thereon.

#### The Rejection Under 35USC§102

Claims 1-4 were rejected under 35USC§102 as being anticipated by Karow '404. Briefly, Karow discloses a device for insertion into the human nose, characterised by having at least one elastically deformable plate-like base element with an inner side and an outer side and with a substantially rectangular shape, said element being substantially flat or slightly arched in its unstressed condition. Karow further teaches that said device is operable for the administration of pharmaceutical or diagnostic agents and for improving nasal breathing.

The present invention, on the other hand, teaches a nasal device operable for the immobilization of microbes, particularly pathogenic organisms entrained in air entering the nasal airway. Karow teaches the application of pharmaceutical or diagnostic agents to either the inside or the outside surface of the nasal device. Karow makes no mention of monitoring the level of exposure to environmental pathogens as described in this disclosure.

In addition to the above concern, applicant would like to draw the Examiner's attention to a prior patent issued to applicant, filing date June 4, 1997, that predates the Karow filing date of April 30, 1999. A copy of the patent in question, US 5,931,852, is

enclosed herewith. The structure described in applicant's earlier patent is identical to that described in the instant application. Consequently, the Examiner's objections regarding anticipation of structure by Karow are moot inasmuch as an issued patent by the present inventor predates Karow.

In order for a patent to qualify as a reference supporting a §102 (b) rejection, it must disclose each and every limitation of the rejected claim. It is settled that even only slight differences between the compared inventions prevent a rejection based on lack of novelty under §102. Anticipation under 35 USC§102 requires that the cited references demonstrate each and every element of the claimed invention. In view of the differences between the elements of the present invention and those of the prior art, particularly a surface that immobilizes microbes in an airstream, it is requested that this rejection be withdrawn.

With regards to issues regarding double patenting, applicant would be willing to file a terminal disclaimer if such a request is made by the examiner.

#### The Rejection Under 35USC§112

The claims of the application have been carefully reviewed in light of the objections raised by the Examiner in the outstanding Office Action. In response to these objections, claims 3-4 have been cancelled.

Entry of this amendment, reconsideration, favorable action and early allowance and publication of this application are respectfully requested. If there are any minor matters remaining, it is respectfully requested that the Examiner contact the undersigned by phone

so that possible minor changes may be discussed in order to expedite the prosecution of this case.

Respectfully,



Michael G. Petit,  
Reg. No. 30,795

P. O. Box 91921  
Santa Barbara, CA 93190-1929  
Tel: 805-563-6556/Fax: 805-563-6615

### **CERTIFICATE OF FACSIMILE TRANSMISSION**

I hereby certify that the following papers are being facsimile transmitted to the Patent and Trademark office on the date shown below.

1. Urgent and Time Sensitive Communication to the Examiner
2. Amendment A responsive to the Office Action dated 06/17/2004.



Michael G. Petit

Date: August 9, 2004